

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA,
STATESVILLE DIVISION
CAUSE NO. 5:25-cv-50**

**ESTATE OF DONNA MARIE JAMES.
By and through its Administrators, JENNIFER
N. FOLLEY and ALISON THOMAS**

Plaintiffs

vs

**RIDGE VALLEY CENTER FOR NURSING AND
REHABILITATION, 1000 College St., Wilkesboro,
NC 28697, Unnamed Negligent Nursing Home Staff,
Nursing Home Organization**

Defendants

DEFENDANT’S MOTION TO DISMISS

COMES NOW, Defendant, Accordius Health at Wilkesboro LLC, (“Accordius”), incorrectly named herein as Ridge Valley Center for Nursing and Rehabilitation¹ by and through counsel, and pursuant to *Federal Rule of Civil Procedure* 12(b)(6) and Local Rules of the United States District Court for the Western District of North Carolina Local Rules of Civil Practice and files this, its Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof states as follows:

1. This case involves medical care provided to Donna Marie James, deceased, while she was a resident at a nursing facility operated by Accordius.

2. Plaintiffs allege that Accordius breached its duty of care by failing to: “transport her to a necessary hematology appointment,” “monitor and respond to signs of internal

¹ Donna Marie James was a resident of Accordius Health at Wilkesboro LLC from August 30, 2022, until on or about March 3, 2023. On August 1, 2024, Accordius Health at Wilkesboro LLC transferred all operations to College Street Operating Company, LLC d/b/a Ridge Valley Center for Nursing and Rehabilitation.

bleeding,” “implement an aspiration protocol,” “call 911 in a timely manner,” “ensure accurate documentation on her death certificate,” “provide adequate care as required by law,” “ensure she received appropriate medical services,” and “accurately document and report her condition.” These allegations necessarily sound in medical malpractice.

3. Plaintiffs failed to comply with Rule 9(j) of the *North Carolina Rules of Civil Procedure*. The failure to consult with a medical professional is fatal to the Plaintiffs’ case. The language of Rule 9(j) is mandatory upon the Court: a case “shall be dismissed” if it does not comply with the rule. For these reasons, this case is due to be dismissed pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure* as Plaintiff has failed to state a claim upon which relief can be granted.

4. In support of its Motion to Dismiss, Accordius is filing a separate Memorandum Brief, which is incorporated herein by reference. Accordius is attaching as **Exhibit 1**, a copy of Plaintiff’s Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendant, Accordius Health at Wilkesboro LLC moves this Honorable Court to grant its Motion and dismiss this cause of action with prejudice.

Respectfully submitted this, the 7th day of April 2025.

**ACCORDIUS HEALTH at WILKESBORO
LLC**

Defendant

By: HAGWOOD AND TIPTON, PC

By: /s/ Michael E. Phillips
Michael E. Phillips (NCSB No. 45198)

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

 X Depositing a copy hereof, postage paid, in the United States Mail, addressed to the pro se plaintiffs as follows:

_____ Via electronic mail addressed to the attorney for each party as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Telecopying a copy hereof to the attorney for each said party as follows:

Jennifer Nicole Folley
Alison Cherrelle Thomas
9001 Sweetbrook Lane #108
Raleigh, NC 27615
Pro se Plaintiffs

This, the 7th day of April 2025.

/s/ Michael E. Phillips
Michael E. Phillips